

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

**CIVIL NO. 1:09CV177
(1:07CR2)**

JOSHUA D. GALVIN,)	
)	
Petitioner,)	
)	
Vs.)	<u>ORDER OF DISMISSAL</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on the Petitioner's motion to address restitution, received by the Court April 20, 2009, and filed herein on May 12, 2009.

The Petitioner and his co-Defendants were each ordered to pay, jointly and severally, restitution to Bank of America in the amount of \$1,295.00; each Defendant was also ordered to pay a \$200 statutory assessment. Petitioner argues that his "share" of the restitution balance is \$431.67, and, considering he has paid his assessment, he alleges he has now paid "most of his 1/3 share of the ordered restitution[.]" **Petitioner's Motion, at 2.** He asks that the Court order the Bureau of Prisons (BOP) to

“cease and desist” from making further deductions from his prison earnings unless BOP can “demonstrate” his co-Defendants are in default of their restitution obligations. *Id.* In addition, Petitioner requests the Court defer further payments to the restitution balance until 60 days after his release from prison. *Id.*

This Circuit requires that the Petitioner’s motion be construed as a habeas corpus petition pursuant to 28 U.S.C. § 2241. *See Gripper v. United States*, 2007 WL 1115953 (4th Cir. 2007); *Hudson v. United States*, 2007 WL 901591 (4th Cir. 2007). The Court is required to make a determination whether to transfer this action to the district court of Petitioner’s confinement or dismiss the action without prejudice to refile in the appropriate district court. *Gripper, supra; Hudson, supra.*

After review of the Petitioner’s motion, the Court finds that the interests of justice would best be served by dismissing this action without prejudice and permitting the Petitioner to refile same in the appropriate district court.

IT IS, THEREFORE, ORDERED that the action is hereby
DISMISSED WITHOUT PREJUDICE.

Signed: May 14, 2009

A handwritten signature in black ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

